

1 THOMAS A. WOODS (SB #210050)
thomas.woods@stoel.com

2 BRYAN L. HAWKINS (SB #238346)
bryan.hawkins@stoel.com

3 STOEL RIVES LLP
4 500 Capitol Mall, Suite 1600
5 Sacramento, CA 95814
Telephone: 916.447.0700
Facsimile: 916.447.4781

6 Attorneys for
7 U.S. Bank National Association, as Trustee,
8 Successor in Interest to Bank of America, National
9 Association as Trustee as Successor by Merger to
10 LaSalle Bank National Association as Trustee for
11 WAMU Mortgage Pass Through Certificates Series
12 WAMU 2005-AR3, by and through its attorney in
13 fact Select Portfolio Servicing, Inc.

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 JAY HOON SHIN; HYSOOK SHIN,

17 Plaintiffs,

18 v.

19 WASHINGTON MUTUAL BANK, F.A.
20 JPMORGAN CHASE BANK; ALL
21 PERSONS AND ENTITIES UNKNOWN
22 CLAIMING ANY LEGAL OR EQUITABLE
23 RIGHT, TITLE, ESTATE OR INTEREST IN
24 THE REAL PROPERTY THAT IS
25 DESCRIBED IN THIS COMPLAINT
26 ADVERSE TO PLAINTIFF SHIN'S TITLE,
27 OR ANY CLOUD ON PLAINTIFF SHIN'S
28 TITLE THERETO; DOES 1 to 10,
INCLUSIVE

Defendants.

CASE NO. 3:18-cv-02143- YGR

**U.S. BANK NATIONAL
ASSOCIATION, AS TRUSTEE,
SUCCESSOR IN INTEREST TO BANK
OF AMERICA, NATIONAL
ASSOCIATION AS TRUSTEE AS
SUCCESSOR BY MERGER TO
LASALLE BANK NATIONAL
ASSOCIATION AS TRUSTEE FOR
WAMU MORTGAGE PASS THROUGH
CERTIFICATES SERIES WAMU 2005-
AR3'S NOTICE OF MOTION AND
MOTION TO INTERVENE IN THIS
MATTER; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: June 12, 2018
Time: 2:00 p.m.
Courtroom: 1, 4th Floor
Judge: Hon. Yvonne Gonzales Rogers

NOTICE OF MOTION AND MOTION TO DISMISS

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 12, 2018, at 2:00 p.m., or as soon thereafter as the matter may be heard before the Honorable Yvonne Gonzales Rogers in Courtroom 1 of the United States District Court for the Northern District of California, located on the 4th Floor of the Oakland Courthouse at 1301 Clay Street, Oakland, California 94612, U.S. Bank National Association, as Trustee, Successor in Interest to Bank of America, National Association as Trustee as Successor by Merger to LaSalle Bank National Association as Trustee for WAMU Mortgage Pass Through Certificates Series WAMU 2005-AR3 (the "Trust") will, and hereby does, move this Court, pursuant to Federal Rule of Civil Procedure 24(a), to intervene in this action.

This Motion is made on the grounds that the Trust currently possesses an interest in the property which is the subject of this action as evidenced by the Assignment of Deed of Trust recorded in the Alameda County Recorder's Office on February 9, 2011 as Document No. 2011052874. Given this interest and the nature of the relief currently being sought by Plaintiffs, disposing of the action would nullify the Trust's interest in the Property.

This Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the accompanying Request for Judicial Notice, the pleading and files in this action, and such other matters as may be presented at or before the hearing.

DATED: April 30, 2018

STOEL RIVES LLP

By: /s/Bryan L. Hawkins
 THOMAS A. WOODS
 BRYAN L. HAWKINS
 Attorneys for U.S. Bank National
 Association, as Trustee, Successor in
 Interest to Bank of America, National
 Association as Trustee as Successor by
 Merger to LaSalle Bank National
 Association as Trustee for WAMU
 Mortgage Pass Through Certificates Series
 WAMU 2005-AR3, by and through its
 attorney in fact Select Portfolio Servicing,
 Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

By this motion, U.S. Bank National Association, as Trustee, Successor in Interest to Bank of America, National Association as Trustee as Successor by Merger to LaSalle Bank National Association as Trustee for WAMU Mortgage Pass Through Certificates Series WAMU 2005-AR3 (the "Trust") respectfully requests that the Court grant its request to intervene in this matter pursuant to Rule 24 of the Federal Rules of Civil Procedure. Good cause exists to grant this motion because the Trust holds the beneficial interest under a Deed of Trust secured by the real property located at 18980 Mount Lassen Drive, Castro Valley, California 94552 (the "Property") which is the subject of Plaintiffs' quiet title action. Unless the Trust's motion is granted, the Trust's interest could be invalidated. Moreover, the Trust's interest is not adequately protected by any other party to this action. Finally, the Trust's motion is timely given that this matter has only recently been assigned to this Court and no substantive litigation has taken place. For these reasons, and as further discussed below, the Trust respectfully requests that the Court grant its motion and allow it to intervene in this action.

II. RELEVANT BACKGROUND FACTS

On January 14, 2005, Plaintiffs obtained a first lien mortgage in the amount of \$648,000 (the "mortgage loan") secured by a Deed of Trust on the Property. Request for Judicial Notice ("RJN"), Exh. A. The DOT identified Plaintiffs as "Borrower," California Reconveyance Company ("CRC") as "Trustee," and Washington Mutual Bank, FA ("WaMu") as the "Lender" and "Beneficiary." *Id.*

On February 9, 2011, JPMorgan Chase Bank ("Chase"), as successor in interest to WaMu, recorded an Assignment of Deed of Trust ("ADOT") transferring the beneficial interest under the DOT to Bank of America, NA ("BANA"), as successor by merger to LaSalle Bank, as Trustee for the Trust. RJN at Exh. B. Moving Defendant U.S. Bank subsequently succeeded BANA as Trustee for the Trust under the DOT. *See* RJN, Exh. C.

1 III. RELEVANT PROCEDURAL HISTORY

2 Plaintiffs have filed multiple prior lawsuits in an attempt to delay the foreclosure on the
3 Property:

- 4 • *Jay Hoon Shin and Hyeshook Shin v. Bank of America, as Trustee; et al.*, Alameda
5 County Superior Court, Case No. RG11595122;
- 6 • *Jay H. Shin v. Bank of America, as Trustee; et al.*, Alameda County Superior
7 Court, Case No. HG14751600; and
- 8 • *Jay Hoon Shin and Hyeshook Shin v. JPMorgan Chase Bank, N.A.; et al.*,
9 Alameda County Superior Court, Case No. HG15754558.

10 RJN, Exhs. D-F.

11 Plaintiffs' modus operandi in these cases is to dismiss the matter without prejudice on the
12 eve of the demurrer hearing. RJN, Exhs. G-I.

13 IV. LEGAL ARGUMENT

14 Federal Rule of Civil Procedure 24(a) provides, in relevant part, that, "[o]n timely motion,
15 the court must permit anyone to intervene who ... (2) claims an interest relating to the property or
16 transaction that is the subject of the action, and is so situated that disposing of the action may as a
17 practical matter impair or impede the movant's ability to protect its interest, unless existing parties
18 adequately represent that interest." To establish the right to intervene under Rule 24(a)(2), a third
19 party applicant must satisfy four elements: "(1) the intervention application is timely; (2) the
20 applicant has a significant protectable interest relating to the property or transaction that is the
21 subject of the action; (3) the disposition of the action may, as a practical matter, impair or impede
22 the applicant's ability to protect its interest; and (4) the existing parties may not adequately
23 represent the applicant's interest." *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006). "While
24 an applicant seeking to intervene has the burden to show that these four elements are met, the
25 requirements are broadly interpreted in favor of intervention." *Citizens for Balanced Use v.*
26 *Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011).

1 The Trust can satisfy all of these requirements. First, its motion is timely and is being
 2 made (1) within two months of this matter's initial filing in the Alameda County Superior Court
 3 and (2) prior to the initiation of any substantive litigation.

4 Second, the Trust has a significant interest in the litigation. Plaintiffs' action seeks to
 5 quiet title to the Property in their favor. If successful, the Trust's beneficial interest under the
 6 DOT would be wiped out.

7 Third, and related to the second requirement, a ruling in Plaintiffs' favor in this action
 8 would wipe out the Trust's ownership interest.

9 Finally, the Trust's interest will not be adequately represented in this action because
 10 responding Defendant JPMorgan Chase Bank does not currently possess any interest under the
 11 DOT.

12 For these reasons, the Trust respectfully requests that the Court grants its motion and
 13 permit it to intervene in this matter.

14 V. CONCLUSION

15 For any and all of the reasons discussed above, the Trust respectfully requests that the
 16 Court grant its motion in its entirety.

17 DATED: April 30, 2018

STOEL RIVES LLP

19 By: /s/Bryan L. Hawkins

THOMAS A. WOODS

BRYAN L. HAWKINS

Attorneys for U.S. Bank National
 Association, as Trustee, Successor in
 Interest to Bank of America, National
 Association as Trustee as Successor by
 Merger to LaSalle Bank National
 Association as Trustee for WAMU
 Mortgage Pass Through Certificates Series
 WAMU 2005-AR3, by and through its
 attorney in fact Select Portfolio Servicing,
 Inc.

DECLARATION OF SERVICE

I declare that I am over the age of eighteen years and not a party to this action. I am employed in the City and County of San Francisco and my business address is Three Embarcadero Center, Suite 1120, San Francisco, California 94111.

On April 30, 2018, at San Francisco, California, I served the attached document(s):

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, NATIONAL ASSOCIATION AS TRUSTEE AS SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION AS TRUSTEE FOR WAMU MORTGAGE PASS THROUGH CERTIFICATES SERIES WAMU 2005-AR3'S NOTICE OF MOTION AND MOTION TO INTERVENE IN THIS MATTER;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

on the following parties:

Jay Hoon Shin
Hyesook Shin
18980 Mount Lassen Drive
Castro Valley, CA 94552

Pro Se Plaintiffs

- ☒ **BY FIRST CLASS MAIL:** I am readily familiar with my employer's practice for the collection and processing of correspondence for mailing with the U.S. Postal Service. In the ordinary course of business, correspondence would be deposited with the U.S. Postal Service on the day on which it is collected. On the date written above, following ordinary business practices, I placed for collection and mailing at the offices of Stoel Rives LLP, Three Embarcadero Center, Suite 1120, San Francisco, California 94111, a copy of the attached document in a sealed envelope, with postage fully prepaid, addressed as shown on the service list. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing contained in this declaration.
- ☐ **BY HAND DELIVERY:** On the date written above, I placed a copy of the attached document in a sealed envelope, with delivery fees paid or provided for, and arranged for it to be delivered by messenger that same day to the office of the addressee, as shown on the service list.
- ☐ **BY EMAIL:** On the date written above, I emailed a copy of the attached documents to the addressee, as shown on the service list.
- ☐ **BY OVERNIGHT MAIL:** I am readily familiar with my employer's practice for the collection and processing of correspondence for overnight delivery. In the ordinary course of business, correspondence would be deposited in a box or other facility regularly maintained by the express service carrier or delivered to it by the carrier's authorized courier on the day on which it is collected. On the date written above, following ordinary business practices, I placed for collection and overnight delivery at the offices of Stoel Rives LLP, Three Embarcadero Center, Suite 1120, San Francisco, California 94111, a copy of the attached document in a sealed envelope, with delivery fees prepaid or provided for, addressed as shown on the service list.
- ☒ **(Federal Courts Only)** I declare that I am employed in the office of a member of this court at whose direction this service was made.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on April 30, 2018, at San Francisco, California.



Sharon R. Witkin